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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/747,990

12/30/2003

Stephen Anthony Gacta

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EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

11/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/747,990

Applicant(s)

GAETA, STEPHEN ANTHONY

Examiner

Gary E. Elkins

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 11 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dreeszen (figs. 1 or 3 emb) in view of Naughton et al (fig. 4 emb) and either Coles et al or Kuhn et al. Dreeszen discloses all structure of the claimed case and blank except formation of the maximum height of the front and/or rear walls less than the maximum height of the side walls. Naughton et al teaches that it is known to make octagonal cartons with reduced height front and/or rear walls to facilitate display while maintaining the desirable octagonal shape of the container. Each of Coles et al and Kuhn et al teaches that it is known to make the front and rear walls in a box shorter than the other side walls and to make the attachment flaps with a short width relative to the overall width of the front and rear walls to provide a display window therebetween. It would have been obvious to make the front and rear walls and the attachment flaps in Dreeszen as taught by Naughton et al and to so in a manner as taught by either Kuhn et al or Coles et al to provide display of the contents through the front and rear of the box. The concept of making a display window in a box by making the walls and flaps of shorter length and width, respectively is well known in this art.

### *Allowable Subject Matter*

3. Claims 10 and 11 are allowed.

*Response to Arguments*

4. Applicant's arguments filed 08 August 2007 have been fully considered but they are not persuasive.

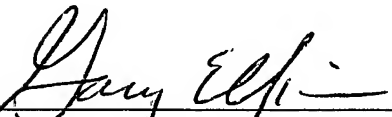
The remarks assert that Naughton et al would not have suggested making an octagonal container as in Dreeszen with a display window since Naughton et al provides additional supports 20 to provide additional strength to the container. Also, the remarks assert that one of ordinary skill in this art would not have had any reason to shorten the walls or flaps in Dreeszen as taught by Coles et al or Kuhn et al since shortening the walls would decrease the stacking strength as compared to full height walls and flaps.

In response, Naughton et al, Coles et al and Kuhn et al suggest the desirability of having front and rear display openings in boxes by forming openings in the walls. Naughton et al is suggestive of forming such display openings in octagonal cartons with diagonal corners. This suggestion is considered valid whether one desires additional stacking support by forming an inwardly extending projection (20 in Naughton et al) or not and would not have led one away from the suggestion of providing display openings. Coles et al and Kuhn et al suggest how to form the front and rear walls and the connecting flaps to form similarly constructed display openings. The desirability lies in the desire to provide viewing of the contents while maintaining the additional stacking strength afforded by the diagonal corners. Also, the end result of a strong octagonal box where the contents are easily viewed is clearly a predictable and expected outcome of the suggestions of the prior art references taken as a whole. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (Sup. Ct. 2007).

*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

  
\_\_\_\_\_  
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October 29, 2007

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